(36)

No. 96-110

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

State of Washington, Christine O. Gregoire,
Attorney General of Washington,

Petitioners,

vs.

Harold Glucksberg, M.D.,
Abigail Halperin, M.D., Thomas A. Preston, M.D.,
and Peter Shalit, M.D., Ph.D.,

Respondents,

ON WRIT OF CERTIORARI TO THE U.S. COURT OF APPEAL
FOR THE NINTH CIRCUIT

BRIEF OF THE DISTRICT ATTORNEY OF MILWAUKEE COUNTY, WISCONSIN AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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ISSUE PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution forbids the State of Washington from uniformly prohibiting assisted suicide.

INTEREST OF *AMICUS CURIAE*

Amicus E. Michael McCann has served as District Attorney of Milwaukee County for 28 years. District Attorneys in Wisconsin "prosecute all criminal actions," §978.05(1), Wis. Stats. Under §940.12, Wis. Stats., assisting a suicide is a Class D Felony punishable by up to a $10,000.00 fine or 5 years in prison or both. Although this brief is submitted in his official capacity as District Attorney of Milwaukee County, the author does not purport to speak for Milwaukee County or the State of Wisconsin on the issues discussed herein. The purpose of this brief is to discuss physician-assisted suicide from the perspective of a public prosecutor, and to identify for the Court issues related to criminal law and criminal procedure.

Discovery of a constitutional right to death would rewrite the law of homicide. It can hardly be criminal to help another to exercise a constitutional right. Surely we may not prosecute those who merely assist others in effectuating choices so fundamental as to garner the protection of substantive due process. What is more, there is really no special expertise--

medical or otherwise--necessary to achieve the object of this asserted "right," *viz.*, death. Anyone can assist, and anyone will. Thus, consent of the victim will become a defense to murder.

Such a radical departure from hundreds of years of legal precedent will cause grave practical difficulties in the enforcement of our homicide laws. The Milwaukee County District Attorney's Office charges about 135 homicides each year, and in about two-thirds of these the killer is related to or knows the victim. Nationally, only about 25% of homicide victims are known to be killed by strangers.[1] In many cases, there are no eyewitnesses to the killing itself, a fact which makes the prospect of having to prove absence of consent in a homicide prosecution quite problematic.

SUMMARY OF ARGUMENT

Were this Court to discover a constitutional right to assisted suicide, the legal and practical consequences of that holding would be astonishing. First, the right to assisted suicide would necessarily extend constitutional immunity to those human agents who administer and implement the suicide "right"--i.e., the people who kill or help kill the one who wishes to die. This means voluntary euthanasia would be constitutionally protected, and consent would be a defense to homicide. Because the majority of

[1]U.S. Dept. of Justice (F.B.I.) "Crime in the United States" (US G.P.O. 1993), p.20.

homicides are perpetrated by spouses, family members, friends, or other acquaintances, and typically without other witnesses present, prosecutors would face an enormous practical obstacle in overcoming a defendant's claim that the victim asked to be killed, Consent defenses in rape cases burden the prosecution and victims, but at least the victim is normally available to rebut such a defense. Consent defenses in homicides would severely burden the prosecution and traumatize the family of the deceased--without the victim being able to refute the allegations of consent.

Recognition of a right to suicide would also confound law enforcement efforts to protect those in danger of suicide. Everyone in the criminal justice system, from the police officer who intervenes to rescue a would-be suicide to the prosecutor seeking civil commitment for the self-destructive, would suddenly have to tiptoe around the constitutional "right" to slay one's self.

In sum, creation of a right to assisted suicide would be gravely mischievous, disruptive of fundamental premises of the civil order, and deleterious to the public peace. This Court must reverse the pernicious decision of the court below.

I. A RIGHT TO ASSISTED SUICIDE WILL NECESSARILY ENTAIL A RIGHT TO EUTHANASIA

There is no material difference between handing a suicidal person a lethal prescription and handing that

same person a loaded pistol. There is, likewise, no material difference between pouring a lethal solution into the suicidal person's glass and pouring a lethal solution into that person's IV tube or feeding tube. In all of these cases, the suicidal person obtains death because of deliberate actions of another person. To say that a constitutional right to assisted suicide encompasses only unassisted administration of the means of death would be like saying a woman has a constitutional right to abortion, but only if she does it herself--without assistance from physicians, nurses, or others. This is why the right to *suicide* (to kill one's self) necessarily entails the right to *euthanasia* (to be killed).

The Ninth Circuit readily acknowledged that assisted suicide and euthanasia come together as a package:

> We would be less than candid, however, if we did not acknowledge that for present purposes we view the critical line in right-to-die cases as the one between the voluntary and involuntary termination of an individual's life. * * * We consider it less important who administers the medication than who determines whether the terminally ill person's life shall end.[2]

[2]Compassion in Dying v. Washington, 79 F.3d 790, 831-832 (9th Cir. 1996).

The Ninth Circuit acknowledged that its decision would result in euthanasia:

> We recognize that, in some instances, the patient may be unable to self-administer the drugs and that administration by the physician, or a person acting under his direction or control, may be the only way the patient may be able to receive them.[3]

As examples of "those whose services are essential" to suicidal patients, the court suggests "the pharmacist who fills the prescription; the health care worker who facilitates the process; [and] the family member or loved one who opens the bottle [of pills]."[4]

The Ninth Circuit also seemed to recognize that the "fundamental right" it discovered would not be limited to competent patients, since third party consent, through the mechanism of "substituted judgment," could extend this "fundamental right" to incompetent patients:

> Finally, we should make it clear that a decision of a duly-appointed surrogate decision maker is for all legal purposes the decision of the patient himself.[5]

[3]*Id.* at 831 (footnote omitted).

[4]*Id.* at 838 n.140.

[5]*Id.* at 832 n.120.

Finally, with breathtaking nonchalance, the Ninth Circuit noted dismissively that limiting the suicide "right" to the terminally ill is not especially important:

> While defining the term "terminally ill" is not free from difficulty, the experience of the states has proved that the class of the terminally ill is neither indefinable nor undefined. Indeed, all of the persons described in the various statutes would appear to fall within an appropriate definition of the term.[6]

Citing its approval of various definitions that include a six-month time frame, no fixed time period, all permanently unconscious patients, and the definition contained in The Uniform Rights of the Terminally Ill Act (which includes insulin-dependent diabetics), the Ninth Circuit further reassures us that

> should an error actually occur it is likely to benefit the [non-terminal/incompetent] individual by permitting a victim of unmanageable pain and suffering to end his life peacefully and with dignity at the time he deems most desirable.[7]

Would any American court dare to opine, in the context of a capital punishment case, that erroneous

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[6] *Id.* at p. 831.

[7] *Id.* at 824 (footnote omitted).

imposition of the death penalty would benefit the *condemned*, by sparing him the miserable existence of life without parole?

II. A RIGHT TO ASSISTED SUICIDE WOULD FACILITATE HOMICIDAL ABUSE BY SPOUSES, FAMILY MEMBERS AND ACQUAINTANCES OF THE VICTIM.

Recognition of a right to assisted suicide would make the consent of the victim a defense to homicide. The defense of consent already creates serious difficulties for rape prosecutions, both in terms of challenges for the prosecutor and anguish for the victim.[8] In homicide cases, the victim cannot be called to refute a consent defense, creating severe proof problems for the prosecutor, as well as additional trauma for family and friends of the victim. Consequently, "mercy-killing" and the broad spectrum of other homicides commonly perpetrated by relatives and acquaintances would become virtually unprosecutable in many circumstances.

Our homicide statutes have historically protected the aged, disabled, or otherwise vulnerable. "Right to die" advocates often seem to assume that only benign, loving families will seek to bestow death as a benefit.

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[8] *See generally* Comment, The "Rough Sex" Defense, 80 J. Crim. L. & Criminology 557 (1989) (drawing comparison between problems caused by consent defense in rape cases and asserted consent defense in homicide cases).

Yet our society is one in which

> family violence is a crime problem of shocking magnitude. Battery is a major cause of injury to women in America. Nearly a third of female homicide victims are killed by their husbands or boyfriends. Almost 20 percent of all murders involve family relationships.[9]

In recent years our society has recognized that the frail elderly are often the victims of domestic abuse. Almost all states (including Wisconsin[10]) have enacted "elder abuse" statutes, to protect elderly and disabled persons from, primarily, *family members*. It would be these same family members who would have the greatest power to influence, and interest in influencing, a "voluntary" decision to commit suicide or be euthanized.[11]

Whose suffering, then, will really fuel suicide/euthanasia? The suffering of the victim or that of the victim's family and friends? The American

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[9]Report of Attorney General's Task Force on Family Violence, U.S. Dept. of Justice, 1984 at p. 10-11.

[10]Section 940.285, Wis. Stats.

[11]A 1986 study by the Family Research Laboratory of the University of New Hampshire (presented to the Gerontological Society of America) found a self-reported abuse rate of 32 per 1,000. Nationally, over 700,000 senior citizens are abused by family members: 58% by spouses and 24% by children. (Milwaukee Journal, January 23, 1986)

Association of Suicidology just released a report which recognizes this concern:

> There would appear to be no small risk that the socially and economically advantaged would find it economically tempting to encourage premature death for their disadvantaged counterparts, or that the poor, ignorant, and disadvantaged would be too ready to give up on themselves. * * * Inevitably, some family members would become enthusiastic for assisted suicide or euthanasia for reasons of personal gain.[12]

This same report noted the evidence that, even among the terminally ill, "suicidal ideation rarely occurs in the absence of a clinical depressive syndrome."[13]

> [L]ittle attention has been paid to the high likelihood of serious accidents inherent in such a scenario. Vomiting may occur as the patient slips into a coma, with aspiration of the vomitus. Should isolated patients change their minds, they may nevertheless choke to death in a panic, or, if rescued, die of

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[12]"Report of the Committee on Physician-Assisted Suicide and Euthanasia," 26 *Suicide and Life-Threatening Behavior*, Supp. 1996, p. 8.

[13]*Id.* at 11.

pneumonia . . .[14]

Just a short time after this report was released, the media reported the case of a 29-year-old student in Boise, Idaho, who apparently changed his mind after swallowing a lethal dose of medicine. Unfortunately for the young man, he drove himself to a "medical center" that was closed and was found dead at the locked door the next morning.[15]

The fact that not all suicides result in peaceful and idyllic "passing" in the company of a loving, committed family was brought home last August by the bizarre details of the death of Judith Curren--Jack Kevorkian's 35th victim. Ms. Curren was a 42-year-old registered nurse who had two daughters (7 and 9) and a troubled marriage to her former psychiatrist. Only *after* Kevorkian attended her death (by lethal injection) on August 15, 1996, did he learn: (1) her autopsy showed no sign of physical disease other than obesity; (2) she had been taking amphetamines, Xanax, Serax, and Oxycodone before her death; (3) police had responded to domestic calls 9 times in her last eight months of life; and (4) she had obtained an injunction in 1993 against her husband--who had been arrested for domestic battery just three weeks before he accompanied his wife to Kevorkian's "solution" to her

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[14]*Id.* at 15.

[15]"Man Changes Mind Too Late to Prevent Suicide," Milwaukee Journal Sentinel, Oct. 31, 1996.

"chronic fatigue syndrome."[16]

III. CONSENT AS A DEFENSE TO HOMICIDE: HISTORICAL BACKGROUND AND FOUR EXAMPLES

Historically, consent has been rejected as a defense to homicide in the United States. Legal scholars have written that consent cannot be a defense to homicide because the State has an interest in preserving public order and the life and safety of its citizens.[17]

> [A] criminal offense is a wrong affecting the general public, at least indirectly, and consequently cannot be licensed by the individual directly harmed. Thus, it is no defense to a charge of murder that a victim, upon learning of the defendant's homicidal intentions, furnished the defendant with the gun and ammunition.[18]

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[16]Compiled from New York Times, 8/20/96; Reuter News Service, 8/19/96; Detroit News, 8/30/96, Dr. Curren told the media afterward that his life was now easier, and that "The hard part was living with it, with all my wife's problems." Oakland (MI) Press, 9/1/96.

[17]J. H. Beale, Jr., Consent in the Criminal Law, 8 Harv. L. Rev. 317, 325 (1894-5); Comment, The "Rough Sex" Defense, 80 Crim. J. L. & Criminology 557, 564 (1989).

[18]LaFave & Scott, Substantive Criminal Law, 687, sec. 5.11(a) (1986).

Consent has been considered in sentencing as a mitigating factor.[19] Some courts have also allowed the victim's consent to be admitted on the issue of the defendant's state of mind.[20] But consent has never been a defense to the crime itself.

Any constitutionally-recognized "right to death," therefore, inevitably and inexorably brings in its wake a Pandora's Box of problems related to prosecution of intrafamily and other homicides. (*Amicus* has included as an appendix a listing of some recently-reported prosecutions to illustrate this problem.) If a person has a right to assisted suicide, that person can consent to be slain, and we have created a legally-recognized consent defense to homicide. Anyone who does not believe such defense strategies will become routine underestimates the "ingenuity" of the criminal defense bar. Consider the following examples:

EXAMPLE A

In March, 1985, Rosewll Gilbert shot and killed his 73-year-old wife, who had osteoporosis and Alzheimer's. At his trial, he testified that he shot his wife, Emily, from behind without discussing his plan with her, because he couldn't stand to put her in a nursing home. He also admitted:

> Sure, I know I was breaking the law but there seems to be things more important than the law, at least to me in my private tragedy. So it's murder. So what?[21]

After being convicted of murder and sentenced to life in prison, Gilbert argued in his appeal that Emily's complaints constituted a "mercy will" which the jury should have been instructed to consider. The Court of Appeals of Florida was unpersuaded, holding that

> Euthanasia is not a defense to First Degree Murder in Florida . . . In the case at hand there was no evidence that Emily left a mercy will. It is ridiculous and dangerous to suggest, as appellant does, that a constructive mercy will was left when Emily (or anyone else who is sick) said/says, "I'm so sick I want to die." Such a holding would judicially sanction open season on people who, although sick, are also chronic complainers.[22]

EXAMPLE B

In 1988, Nora Broomall and Cecil Booher were convicted of the contract killing of Broomall's husband; Booher had contended at trial that he only assisted the

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[19]Paul H. Robinson, Criminal Law Defenses, 315 (1984).

[20]**People v. Matlock**, 336 P.2d 505, 508-10 (Cal. 1959).

[21]**Gilbert v. Florida**, 487 So. 2d 1185, 1188 (Ct. App. 1986)

[22]*Id.* at 1189.

victim, at the victim's insistence, in committing suicide so that his wife could collect his life insurance benefits. Broomall then requested the following jury instructions:

> (b) I charge you that the consent of the victim may be a defense to murder if the defendant in the instant case had no evil disposition toward the victim but acted only at the victim's own earnest request to save him from what the victim considered to be a greater evil.
>
> (c) Suicide is not a crime in the State of Georgia.[23]

The Georgia Supreme Court, in rejecting Broomal's instruction, noted that

> the gist of these requests to charge is to suggest to the jury that certain conduct, involved in aiding the commission of a suicide, may not amount to malice, and consequently would not support a malice murder conviction."[24] * * *
> While in this state there is no statutory proscription relative to suicide, nor aiding suicide, we do not view a killing by consent of, or at the request of, the victim to be "legal."[25]

[23]**Broomall and Booher v. State**, 260 Ga. 220, 222, 391 S.E.2d 918, 921 (1990).

[24]*Id.* at 223, 391 S.E.2d at 921 (footnote omitted).

EXAMPLE C

In a recent Wisconsin prosecution for First-Degree Intentional Homicide,[26] defendant Michael Bartz testified at trial that the victim, his friend, was despondent (because he was about to go to prison for 6 years), wanted to commit suicide, and had brought a sawed-off shotgun and walked with Bartz into a field. Bartz called 9-1-1 after the victim's death and told responding officers how he had held the gun for his friend so that his friend could pull the trigger and thus carry out his wish. Bartz appealed his conviction--and life sentence with no parole for 40 years--arguing that the trial court erred in not instructing the jury on assisted suicide as a lesser-included offense.[27] Although Bartz's conviction was upheld on appeal, the appellate court relied upon the specific forensic facts of the case in holding that the failure to give an instruction on assisted suicide as a lesser included offense was not error.[28]

[25]*Id.* at 223 n.4, 391 S.E.2d at 921 n.4.

[26]**State v. Michael Bartz**, Walworth County Circuit Court, #93-CF-226, April 1994.

[27]"Reasonable minds could differ on whether it was murder or a friend assisting a friend to end his own life." Petition for Review, **State v. Bartz**, #95-2345-CR, at 12.

[28]Unpublished Decision #95-2345-CR, filed August 7, 1996.

EXAMPLE D

On Sunday, May 12, 1996, in Springfield, Illinois, John McCreery and his family decided that they did not want to be a financial burden to their relatives. They settled upon a bizarre suicide plot, in which a knife was purchased for each of the five family members and the father, John McCreery, ended up dead. His 22-year-old son, Shannon McCreery, has been charged with First Degree Murder for slashing his father's throat in a Springfield hotel room after his father had slashed his abdomen and said he wanted to die. This case is presently set for trial on December 9, 1996, and the defense will be that Shannon, "at most", assisted a suicide.[29]

IV. SUICIDE AS A CIVIL RIGHT

Recognition of a constitutional right to assisted suicide would create additional problems for law enforcement. Police officers routinely intervene to forcibly seize and detain--and even civilly commit--suicidal citizens.[30] Wisconsin Law explicitly permits the use of force against another "if the person reasonably believes that to use such force is necessary

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[29]"Mystery Surrounds Hotel Killing," Springfield State Journal-Register, May 14 & Sept. 26, 1996.

[30]Section 51.15, Wis. Stats. *See also* Ch. 55, Wis. Stats. (Protective Services).

to prevent such person from committing suicide."[31] In 1975, the Minnesota Supreme Court held that

> there can be no doubt that a bona fine attempt to prevent a suicide is not a crime in any jurisdiction, even where it involves the detention, against her will, of the person planning to kill herself."[32]

If, however, this Court were to recognize a constitutionally-protected right to suicide, would law enforcement's traditional response to suicide attempts trigger civil rights liability?

On September 5, 1996, a local police officer received a hero's treatment in the local press for risking his own safety to push a despondent man off railroad tracks "just seconds before the train whizzed past at 75-80 mph." The officer's department commended his heroism for preventing the suicide, and the man was taken against his will to the psychiatric ward of a local hospital.[33] Just three days later, police officers in neighboring Michigan were criticized and labeled "thugs" after interrupting a hotel meeting between Jack Kevorkian and a despondent 60-year-old woman who

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[31]Section 939.48(5), Wis. Stats.

[32]**State v. Hembd**, 305 Minn. 120, 126, 232 N.W.2d 872, 878 (1975).

[33]"Officer Praised for Saving Man from Train," Milwaukee Journal Sentinel, September 5, 1996.

died the next day.[34] Other than the comparative esthetics of seeking death by high-speed train versus death by the medically trained, how is a police officer to distinguish between the exercise of a constitutional right and the commission of a desperate, but unprotected, act?

On October 22, 1996, 46 year-old Kathy Change doused herself with gasoline and burned herself to death in front of 50 people on the University of Pennsylvania campus in Philadelphia. She explained her motivation as follows:

> My real intention is to spark a discussion of how we can peacefully transform our world. I offer myself as an alarm against Armageddon and a torch for liberty.[35]

Ought Ms. Change's audience to have intervened to save her or facilitated her constitutional right to death (*and* expression) by providing the matches? Is Kathy Change's sacrificing herself for what she perceives as the value of her message legally and constitutionally any more repugnant than a cancer patient killing herself to avoid what she perceives as being a burden to her family? Which is a legitimate exercise of liberty?

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[34]"Woman Kills Self A Day After Police Raid," Milwaukee Journal Sentinel, September 8, 1996.

[35]"Woman Sets Herself on Fire to Draw Attention to Beliefs," Milwaukee Journal Sentinel, October 27, 1996.

This same difficulty will plague efforts to seek civil commitment for those who are bent on self-destruction.[36] A state may civilly commit a mentally ill person who is dangerous to himself.[37] If there is a right to suicide, will the State have to prove, by clear and convincing evidence, not only the *risk* of suicide but also its "irrationality"? How is the State to distinguish between rational depression and irrational depression without making judgments about quality of life--i.e., whether that particular life is worth living?

Presently, in Wisconsin alone, there are 755 prison inmates serving life sentences.[38] Nationally, there are many thousands of such inmates--a large portion of them awaiting execution. If our Constitution provides a fundamental right to death for somebody who wants to avoid short-term suffering, must it not also provide a fundamental right to death for a "lifer" or death-row inmate who has no chance of release? To permit an assisted suicide for somebody with a serious illness or disability, but not for a convicted murderer on death row, would be to give priority in death to

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[36]Section 51.20 Wis. Stats.

[37]**Addington v. Texas**, 441 U.S. 418 (1979); *see also* **O'Connor v. Donaldson**, 422 U.S. 563, 574 n.9 (1975) (listing "foreseeable risk of self-injury or suicide" as example of dangerousness to self).

[38]Resident Population Data Report of the Wisconsin Department of Corrections, Sept. 30, 1996.

those with illness and/or disability--a bizarre result.[39]

CONCLUSION

Transformation of the traditional crime of assisted suicide into a constitutional right would not only be a prosecutor's nightmare, but also a killer's dream. This Court should vigorously disavow this misuse of the Constitution.

The judgment below should be reversed.

Respectfully submitted,

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[39]Prior cases have held that prisoners have no right to fast to death. *E.g.*, In re **Caulk**, 125 N.H. 226, 480 A.2d 93 (1984); **State ex rel. White v. Narick**, 292 S.E.2d 54 (W.Va. 1982). Recognition of a right to suicide would call these decisions into question, permitting convicts to use the threat of exercising this new "right" as a weapon against prison discipline and moral. *See* Caulk, 125 N.H. at 231, 480 A.2d at 96.

SELECTION OF RECENT PROSECUTIONS FOR MERCY KILLINGS

DATE	PLACE	DESCRIPTION
October, 1952	Roseburg, Oregon	Thomas Bouse sentenced to death for drowning his wife in the bathtub--despite his claim that his wife "was tired of living" and had asked to die. (199 Ore. 676)
September, 1957	Los Angeles, California	Earl Matlock sentenced to death for strangling a man that he claimed asked him to do it (because he only had six months to live and didn't want his death to look like suicide).(51 Cal.2d 682)
February, 1980	Lawrence, Kansas	Kathleen Cobb sentenced to life for First Degree Murder; shot her long-time friend in the head after he injected himself with an overdose of cocaine and told her "make sure I'm dead." Instruction on Assisted Suicide was denied; conviction affirmed. (229 Kan. 522)
May, 1981	Danville, Illinois	Robert Mueller, M.D. and his wife Pamela Schopp, R.N., charged with conspiracy to murder their newborn conjoined twins by withholding oral feedings for 9 days. Case later dismissed. (N.Y. Times, 7/2/81)

April, 1982	Houston, Texas	Attorney William Chanslor, convicted of Solicitation to Murder his wife (42; stroke); paid an undercover cop $2,500 for "undetectable poison." The Texas jury sentenced him to 3 years prison. (Newsweek, 8/16/82) ***See 108 for detailed description**
February, 1983	Los Angeles, California	Thomas C., 16, found delinquent for Second Degree Murder for shooting his sister (14; depressed) because "she begged me to kill her. I didn't want to. I loved her so." (183 Cal. App. 3rd 786)
March, 1983	Houston, Texas	Billy Ray Clore shot his father (62; comatose) in a nursing home, was convicted of Attempted Murder and received 3 years probation. (Milw. Journal, 7/19/83)
June, 1983	Harvey, Illinois	Daniel McKay, a veterinarian, killed his newborn son (cleft palate) by smashing his head on the delivery room floor. Two trials for murder ended with hung juries. (N.Y. Times, 2/18/85; Milw. Journal, 1/31/88)
August, 1983	Ventura County, California	Joseph G., 16, found by California's Supreme Court to have aided a suicide rather than murder his friend (16) by entering into a "suicide pact" and driving a car over a cliff. (34 Cal. 3rd 429)

February, 1984	Newburyport, Massachusetts	Victoria Knowlton, RN, acquitted of Attempted Murder for turning off respirator of patient (59; ALS). (National Law Journal, 10/29/84)
August, 1984	Richfield, Wisconsin	Michael Duychak shot and killed his mentally ill sister (30) and was sentenced to life in prison. (Milw. Journal, 9/5/84)
January, 1985	Benbrook, Texas	Michael Goodin convicted of Murder for shooting a woman he claimed was depressed and "talked him into it." (726 S.W.2d 956)
March, 1985	Ft. Lauderdale, Florida	Roswell Gilbert convicted of First Degree Murder for shooting his wife (73; Alzheimer's) and sentenced to life in prison. (Time, 5/27/85; 487 So.2d 1185)
April, 1985	Los Angeles, California	John Kappler, M.D. (anesthesiologist) charged with Attempted Murder for turning off the respirator of a patient (28; quadriplegic). (Milw. Journal, 5/14/85)
July, 1985	New York, New York	Kurt Semel acquitted by a judge of Murder and Manslaughter, for suffocating his wife (72; lung cancer). (Milw. Journal, 8/15/85)

July, 1985	Spotsylvania County, Florida	Linda Lou Seal turns herself in after fatally shooting her father (68; cancer), saying "I had to do it. He was suffering so." Convicted of First Degree Murder. (Florida Star)
December, 1985	Richmond, California	Edward Baker was charged with Assault and False Imprisonment for forcing a nurse at gunpoint to disconnect a respirator from his father (69; cancer), who died ten minutes later. (Milw. Journal, 12/26/85)
January, 1986	St. Petersburg, Florida	Dr. Peter Rosier, a pathologist, acquitted of killing his wife (43; lung cancer). (Newsweek, 11/7/88)
April, 1986	Atlantic County, New Jersey	Joseph Hossman, MD, killed his mother-in-law (81; Alzheimer's) by injecting Demerol into her feeding tube. Convicted of Manslaughter; two years probation, $10,000 fine, 400 hours com. service; medical license reinstated after a 6-month revocation. (New Jersey Star Ledger)
May, 1986	Media, Pennsylvania	Irene Bernstein shot and killed her 2-year-old, brain-damaged son. She was convicted of Third Degree Murder and sentenced to 5 years probation and community service. (Milw. Journal, 11/19/87)

February, 1987	Adams County, Wisconsin	Frank Reinl shot and killed his terminally ill wife; allowed to plead guilty to Second Degree Murder. (Milw. Journal, 10/20/88)
August, 1987	Cincinnati, Ohio	Nurses' Aide Donald Harvey sentenced to life in prison after pleading guilty to killing 25 nursing home patients, explaining "I visualize myself being in that same position, and lying there and suffering for years, and no one cared to come and see me. And I thought I'd put them out of their misery, like I hope someone would put me out of my misery." (Milw. Journal, 8/23/87)
October, 1987	DeKalb County, Georgia	Nora Broomall and Cecil Booher convicted of murdering Broomall's husband--who Booher claimed asked to be killed so his wife would get his insurance money. (260 Ga. 220)
November, 1987	Mount Holly, New Jersey	Frederick Wisniewski charged with Manslaughter for shooting a man who had attempted suicide 5 times before--allegedly in exchange for $40,000.00 and a new Mercedes-Benz. (Milw. Journal, 1/30/88)

February, 1988	Alexandria, Minnesota	Oscar Carlson went to nursing home and shot wife (71; Alzheimer's). He pled guilty to Second Degree Murder and received a 3 1/2 year prison sentence. (Milw. Journal)
March, 1989	Miami, Florida	Jean Arias, R.N., charged with Solicitation to Commit Murder for recruiting another nurse to poison a 5-week-old infant (brittle bone condition). (Miami Herald)
April, 1989	Chicago, Illinois	Rudy Linares given conditional discharge for Unlawful Use of Weapon; holding nurses at bay with a .357 Magnum after disconnecting respirator from his son (15 mos.; coma). A grand jury refused to indict on First Degree Murder. (Milw. Journal, 5/19/89)
December, 1989	Chicago, Illinois	Gerald Williams charged with First Degree Murder for killing his wife, who had multiple sclerosis and "begged him to end it." (Milw. Journal, 12/26/89)
June, 1990	Munnsville, New York	Adelbert Ward charged with the mercy killing of his older brother. (Milw. Journal, 6/26/90)
August, 1990	Detroit, Michigan	Bertram Harper suffocates wife (69; cancer) with plastic bag. Acquitted. (Milw. Journal, 5/10/91)

October, 1990	Milwaukee, Wisconsin	Patricia Rosio convicted by jury of Reckless Homicide for starving her son (11; cerebral palsy); placed on probation--after the *jurors* requested leniency. (Milw. Co. Circuit Court Case #F-913178)
August, 1993	Walworth County, Wisconsin	Michael Bartz sentenced to life in prison for shooting his friend, who was despondent, suicidal, and brought a gun to the scene. (Circuit Court Case No. 93-CF-226)
October, 1993	Jonesboro, Georgia	Dr. Eva Carrizales charged with Murder in the death of a terminally ill 5 1/2 week old baby. (New York Times, 11/12/93)
April, 1996	Brookfield, Wisconsin	William Volkmann charged with the First Degree Murder of his wife 75-year-old wife. He stated he shot his wife in the head after she fired her home health worker. (Milw. Journal, 4/12/96)
May, 1996	Springfield, Illinois	Shannon McCreery charged with First Degree Murder for slashing the throat of his father--who had just slashed his own abdomen and told his family that he wanted to die. (Newsweek, 9/2/96)

Case of the Willing Victim

He called his plot to poison his wife "a mission of mercy," an attempt to end the pain and suffering caused by a paralyzing stroke she had three years ago. She backed his story, insisting in dramatic and emotional testimony that she wanted to die: "I begged and pleaded with him to help me, to get something that would help [kill me]." But the jury was unmoved: last week William Chanslor, 50, a prominent Houston attorney and past president of the city's Trial Lawyers Association, was convicted of "solicitation to murder" his 42-year-old wife, Sue.

The plot was bizarre even by Texas standards. It began last year when Chanslor, using the alias John O. Thompson, advertised in paramilitary journals for an "expert in poisons & chemical agents with access to same." In one of those magazines, Soldier of Fortune, he spied an ad for a five-volume set of books entitled "How to Kill," written by a Canadian weapons expert (box). He purchased the books and arranged to contact the author, John Minnery, at his Ontario home. Between October and March of this year, the two men had about a half-dozen telephone conversations about poison. Chanslor first inquired about killing animals, then revealed that his intended victim was human—42 years old and partially paralyzed in a wheelchair.

When Chanslor asked Minnery to procure poison for him, Minnery went to the police. The two men finally met in April at the Toronto airport, where Minnery introduced the Texan, still using his alias, to Keith Symons, an Ontario provincial policeman posing as a man with access to poisons. During an hourlong conversation in the airport lounge, taped and photographed by Canadian police, Chanslor detailed his mission. When asked whether the victim might cooperate by committing suicide, he lamented, "It's an impossibility. We talked about it once and then the person backed out . . . It's gone on too long, too long . . . I'm sick of waiting, for this bitch is really getting to me."

After discussing several poisons and rejecting them—because they leave traces—the men decided on ricin, a toxin more powerful than cobra venom; it is extremely rare and produces a slow, convulsive death. It is also virtually impossible to detect: Minnery assured Chanslor that an autopsy would attribute the death to a stroke, heart attack or uremic failure. Chanslor said he planned to give the poison to the victim at bedtime and inquired how long he should wait before calling his neighbors for help. "Eight to ten hours," Minnery informed him.

Vitamin C: Less than two weeks later, Symons flew to Houston and, this time under video surveillance by Texas authorities, delivered to Chanslor a yellow capsule (which actually contained vitamin C) along with a surgical mask, gloves and tweezers to ensure that he didn't touch or inhale the "poison." After Chanslor paid the cop $2,500 and got into his 1981 Lincoln, police surrounded the car and arrested him.

The defense didn't dispute the facts, only their interpretation—arguing that mercy, not murder, was on Chanslor's mind. The Chanslors tried to bolster that view by a public display of devotion throughout the eight-day trial; he wheeled his wife into the courtroom during the trial, and she sat as close to him as possible. On the stand, they echoed each other, maintaining that their complex scheme to make her death appear natural stemmed from the fear that their son, Brandon, would be stigmatized by his mother's suicide. But Assistant District Attorney Jim Lavine dismissed the mercy defense as "a kaleidoscope of deception" and Mrs. Chanslor's testimony as pathetic self-deception. He introduced statements from Mrs. Chanslor, made on the day of her husband's arrest, that she had never asked him to provide her with a way to die and that she wouldn't willingly take her own life. "He wanted to kill his wife because she was a yoke, a burden to him," Lavine argued. "The mission of mercy is for him, not her."

The jury took only three hours to return its verdict. Mrs. Chanslor took the stand again, this time pleading that her husband not be sent to prison: "I can't live without him." Chanslor himself begged the jury not to separate him from his family because "they can't make it without me, and I can't make it without them." In the end, Mrs. Chanslor's mercy mission proved far more successful than her husband's. The jury rejected prosecution arguments for a prison term of 16 to 20 years and sentenced Chanslor to just three years in prison, making him eligible for parole in one year. "Mrs. Chanslor was devastating," conceded Lavine. Agreed his fellow prosecutor, Brad Beers, "If it wasn't for her testimony, he would have gotten 20 years."

MARK STARR with DAN SHAPIRO in Houston and PAULA CHIN in New York